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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,647	06/18/2001	William T. Sherrill	2001US003	1838

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CLARIANT CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
4000 MONROE ROAD
CHARLOTTE, NC 28205

EXAMINER

FRANK, ELLIOT L

ART UNIT	PAPER NUMBER
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2125

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,647

Applicant(s)

SHERRILL ET AL.

Examiner

Elliot L Frank

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 24-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 6) ☐ Other: _____

DETAILED FINAL ACTION

Response to Amendment

1. The following FINAL office action is a response to the applicant's amendment (A) filed on 12 November 2003.
2. Corrections or explanations in regard to items 1-5 and 7b of the previous office action have been considered and are accepted.
3. Claims 1-21 and 24-29 remain pending in the application. Claims 22 and 23 have been canceled by amendment.
4. The following rejections are maintained from the previous office action or updated in response to the applicant's amendments. A response to arguments follows these rejections.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 3,6,7,8,10,13,14,18,19,21,24 and 27-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - a. Claims 2,3,6,7,8,10,13,14,18,19,21,24 and 27-29 are rejected for using the language, "and combinations thereof" in the body of the claim. The limitation

is not considered to be distinctly claimed because some combinations of the components listed in the claims may not yield the same results as others.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6,9-13,16,17-21 and 24-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Priestley et al. (US 2002/0021439 A1).

The limitations of the aforementioned claims, and the applicable citations in Priestly et al., are as follows:

1. A method for color management by a retailer (page 3, paragraph 0036) comprising the steps of: choosing an engineered color standard (ECS); communicating the ECS to a product vendor (choosing and communicating recited at page 2, paragraphs 0029-0030); having a product produced using the ECS; and controlling a product's color quality by comparing the ECS to the product (page 4, paragraph 0074).

2. A method for color management by a retailer (page 3, paragraph 0036) comprising the steps of: choosing an engineered color standard (ECS), the ECS

comprising a component, the component being reflectance data and a dye specification (page 3, paragraphs 0035-0036); communicating the ECS to a product vendor (choosing and communicating recited at page 2, paragraphs 0029-0030); having a product produced using the ECS; and controlling a color quality of the product by comparing the ECS to the product (page 4, paragraph 0074).

3. The method of claim 1 wherein the ECS further comprises a component being selected from the group consisting of dyestuff, dye specification, dyeing procedures, finishes, finishing procedures, preparation chemicals, preparation processes and combinations thereof (page 3, paragraphs 0035-0036).

Method claims 10,19 and 24 contain the same functional limitations as claim 3, and as a result are anticipated by the same citations in Priestly et al.

4. The method of claim 1 wherein choosing an engineered color standard further comprises: designing a product having a color, communicating the color to a provider of engineered color standards, and analyzing the color to obtain the ECS (page 4, paragraphs 0066-0072).

Method claims 11,17 and 25 contain the same functional limitations as claim 4, and as a result are anticipated by the same citations in Priestly et al.

5. The method of claim 4 wherein analyzing the color further comprises the step of using computer aided color matching techniques (page 4, paragraphs 0057-0058).

Method claims 12,20 and 26 contain the same functional limitations as claim 5, and as a result are anticipated by the same citations in Priestly et al.

6. The method of claim 1 wherein communicating the ECS to the product vendor being selected from the group consisting of: physically sending the ECS, electronically sending the ECS, posting the ECS at a website, and combinations thereof (page 2, paragraph 0030).

Method claims 13,16,21 and 27 contain the same functional limitations as claim 6, and as a result are anticipated by the same citations in Priestly et al.

9. A method for color management by a retailer (page 3, paragraph 0036) comprising the steps of: providing an engineered color standard (ECS), the ECS comprising reflectance data, and a dyestuff formula (page 3, paragraphs 0035-0036); communicating the ECS to a product vendor (page 2, paragraphs 0029-0030); having a product produced using the ECS; and controlling a product's color quality by comparing the ECS to the product (page 4, paragraph 0074).

18. The method of claim 17 wherein the requestor being selected from the group consisting of retailers, designers, and combinations thereof, and the requestor not being selected from the group of cut and sew shops, fabric mills, dye house, and combinations thereof (pg. 5, paragraphs 0088-0090).

The limitations of the aforementioned claims are recited in entirety in Priestley et al.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7,8,14,15,28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Priestley et al (US 2002/0021439 A1) in view of Wasinger et al. (USPN 5,633,722 A).

Claims 7 and 8 depend from claim 1. Claims 14 and 15 depend from claim 9. Claims 28 and 29 depend from claim 2. Claims 1,2 and 9 have been shown to be anticipated by Priestley et al.

While Priestley et al. does recite controlling a color characteristic in a manufacturing production system using a color standard (page 4, paragraph 0074), it does not specifically recite the requirements of claims 7 and 8 as follows:

7. The method of claim 1 wherein controlling the product's color by comparing the ECS to the produced product being selected from the group consisting of: visually inspecting, visually inspecting under a single light source, visually inspecting under multiple light sources, electronically inspecting, and combinations thereof.

8. The method of claim 1 wherein the product vendor is a textile vendor selected from the group consisting of: a cut and sew shop, a fabric mill, a dye house, or combinations thereof.

Wasinger et al., analogous to Priestley in the both systems are used in manufacturing for automated color management (Wasinger et al., column 1, lines 8-15), reads on the additional requirements for claim 7 at column 2, lines 36-61 wherein it describes an in-process color measurement system. Claim 8 is read at

column 1, lines 42-61 wherein the industrial application of the invention at a textile factory is described.

Method claims 14 and 28 have the same functional limitations as claim 7, and therefore are obvious in view of the same citations in the combined references.

Method claims 15 and 29 have the same functional limitations as claim 8, and therefore are obvious in view of the same citations in the combined references.

It would have been obvious to have combined the elements of Wasinger et al. into Priestley et al. to have created a process that interprets both the color values and gray scale values compared with comparable target stored values of a standard sample and the process speed is adjusted and ultimately terminated once desired process outputs are reached (Wasinger, column 2, lines 46-61).

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Response to Arguments

8. Applicant's arguments filed 12 November 2003 have been fully considered but they are not persuasive.

9. Argument to traverse 35 USC § 112 rejections:

a. The examiner has considered the applicant's argument to traverse the 112 rejection but respectfully disagrees with the applicant.

b. The claims previously indicated are not in the proper format to qualify as a Markush claim structure. Acceptable Markush structures are:

1. wherein X is a ___ selected from the group consisting of A,B,C or D.

2. wherein X is a ___ selected from the group consisting of A,B,C and D.

There is no recitation in the description of the Markush claim including the additional limitation "or combinations thereof". Including this limitation introduces additional choices beyond A,B,C or D. These combinations may not yield the same outcome as one another.

c. Alternatively, even if the claims were considered in proper Markush format, the rule requires: "However, such if such a practice renders the claim indefinite or if it results in undue multiplicity, an appropriate rejection should be made." See MPEP section 2173.05(h).

d. The new 112 rejections to claims 8 and 29 were necessitated by the applicant's amendment, and therefore the final office action is proper.

10. Argument to traverse prior art rejections:

- a. The examiner has considered the applicant's argument to traverse the prior art rejections, but respectfully disagrees with the applicant.
- b. The applicant's primary argument is that the prior art of reference, as presented, cannot overcome metamerism. This is one of the primary advantages of the instant invention.
- c. Claim 1, given its broadest reasonable interpretation, requires choosing a color using an ECS and then having a product produced using that color.
- d. There is no claimed requirement that the method of the claimed invention to overcome metamerism.
- e. However, even if it is assumed that there is a requirement to overcome metamerism, the examiner disagrees that the references do not overcome the effects of metamerism using a color standard. The invention does use a captured image of an object to get the color, but "Preferably, the method includes the step of including a reference indicator color with the capture image." (page 4, paragraph 0057). This reference color has known red, green and blue values, and is in turn used to calibrate the image so that the true (or standard) color of the object is presented to a manufacturer for use in processing. This procedure of calibrating a sampled color to it's standard color using another color standard would overcome the effects of environmental influences like lighting, and hence overcome metamerism.
- f. Therefore, the prior art of record, alone or combined, does read on the limitations of the claims 1-21 and 24-29 of the instant invention.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

USPN 6,628,829 B1 – Chasen – System for matching surface color

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

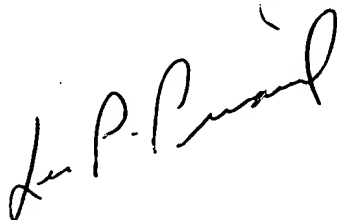
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elliot L Frank whose telephone number is (703) 305-5442. The examiner can normally be reached on M-F 7-4:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo P Picard can be reached on (703) 308-0538. The fax phone number

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for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5484.

A handwritten signature in black ink, appearing to read "Leo P. Picard", written in a cursive style.

ELF
November 26, 2003

LEO PICARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100